

Remarks in Support of Patentability

The examiner states that "it is not clear whether the applicant intends to claim the combination of a cleat and the baseball shoe or is claiming the subcombination of the cleat for use with the baseball shoe." Applicant regrets any confusion caused to the examiner by the manner in which the claims are drawn. Applicant respectfully submits that when the claims are read carefully, it is abundantly clear that in some instances applicant is claiming a cleat having universal application and being suitable for use with the plurality of different athletic shoes. This is the subject matter recited in independent claim 1 and in claims 2, 3 and 8, all of which depend, directly or indirectly, from independent claim 1.

In other instances applicant is claiming "a baseball shoe". This is the case with independent claim 4, which recites "a baseball shoe comprising". This is also the case with dependent claims 5, 6, 7 and 9 all of which depend, directly or indirectly, from independent claim 4.

Applicant has further included claims directed to "a universal cleat usable in any one of plurality of differently configured *athletic* shoes furnished by different manufacturers....". Claim 10 is one such claim. Claim 10 is clearly directed to a universal cleat which may be used in any one of a number of different athletic shoes, having different configurations, furnished by different manufacturers. The important thing is that claim 10 is directed to the cleat. The structure recited in the preamble of claim 10 is environmentally limiting structure included to identify and specify the function fulfilled by the cleat. The same is true of claim 11, 12, 13 and 14, all of which depend from claim 10.

Claim 15 similarly recites “a universal cleat usable in any one of a plurality of differently configured baseball shoes furnished by different manufacturers...”. Accordingly, claim 15 is more limited than claims 10 through 14. Claim 15 limits the universal cleat to one which is usable in *baseball shoes furnished by different manufacturers*. Once again, the claim is directed to the cleat, not to the shoe. The shoe structure is included in the claim preamble only to provide an environmental limitation for the cleat, which is the subject matter to which the claim is directed. The same is true of claims 16 and 17, both of which depend from claim 15.

Claim 18 is similar to claim 15 in that it recites “a universal cleat usable in any one of a plurality of differently configured baseball shoes furnished by different manufacturers...”. Claim 19 is directed to “a baseball shoe” as are dependent claims 20, 21 and 22 all of which depends from claim 19. In claim 19 the cleat is recited as a part of the shoe.

Claim 23 is directed to a baseball shoe and in that regard is similar to claim 19. Claims 24, 25 and 26 all depend from claim 23 and, accordingly, are additionally directed to baseball shoes having the inventive cleats mounted in or mountable in those shoes.

Applicant believes the foregoing clarifies the situation and should eliminate the examiner’s apparent confusion regarding the subject matter to which the claims are drawn.

Further respecting this issue and the examiner’s comments, the examiner has asserted that “in many instances claims which appear to be drawn only to the subcombination of the cleat (no baseball shoe has been claimed), are further structural and limited with reference to the baseball shoe.” It is not the case that no baseball shoe

has been claimed, as evidenced by the foregoing. There are numerous claims which are directed to a baseball shoe.

The examiner has further stated by example that claim 1, in line 1, appears to clearly indicate that no baseball shoe is claimed and further asserts that “the claim is drawn to a cleat for use with a baseball shoe.”¹ This is incorrect. In claim 1 the word “baseball” does not even appear. The claim is drawn to “a universal cleat suitable for use with a plurality of different *athletic* shoes...”. The examiner is encouraged to re-read claim 1 whereupon the examiner will find that there is no mention of the word “baseball” or any “baseball shoe” in claim 1.

The examiner has further asserted that claim 2 recites limitations which are dependent on the size of the recess in the “baseball shoe”. Again, this is incorrect, there is no recitation in claim 2 of any limitation relating to a baseball shoe. While there are limitations relating to the relationship between the recesses in the shoe soles and the base of the cleat, applicant believes this is an appropriate way to claim this aspect of the invention. Applicant does not believe this amounts to any type of error.²

The examiner further states that “with respect to claims such as claims 2 and 16 the claims actually appear to recite that there is a baseball shoe while also appearing (at least from the preamble thereof) to be drawn only to the subcombination of the cleat for use with the baseball shoe.” Part of this statement is true; part of this statement is not true. The word “baseball” does not appear in claim 1 or claim 2 but it does appear in claim 16 (by virtue of claim 16 depending from claim 15). Hence, claim 2 does not recite

¹ Last full sentence, page 3, official action of 2 February 2005.

² The first sentence at the top of page 4 of the official action of 2 February 2005 indicates that the claims have “this type of error” running therethrough. Applicant does not agree and cannot find such errors within the claims.

that there is a baseball shoe involved, the examiner's view notwithstanding, whereas claim 16 clearly does contemplate presence of a baseball shoes. Indeed, claim 15, from which claim 16 depends, recites "a universal cleat usable in any one of a plurality of differently configured *baseball* shoes...". Hence, claim 15 is directed to a cleat usable with different baseball shoes; the subject matter of the claim is that of the cleat, not of the shoes. The same is true of claims 16 and 17, both of which depend from claim 15.

Applicant respectfully submits that in every case the examiner should treat the preambles of the claims as defining the environment in which the structural claim elements function.

I. Rejection of Claims 10-26 Under 35 U.S.C. § 112, ¶ 1

At pages 2-3 of the Office Action, Examiner states that claims 10-26 are rejected under 35 U.S.C. § 112, ¶ 1 as failing to comply with the written description requirement. Specifically, Examiner states that independent claims 10, 11, 15, 18, 19 and 25 recite structure features not supported by the specification.

For example, the examiner asserts respecting claim 10, lines 12 through 13 and claim 11, lines 40 through 41 that the limitation "with a longest side of said three sides of said base being shorter than the longest side of any of said triangular recesses" is not described in the specification.

As a further example, the examiner asserts that claim 15, lines 6 through 7, the limitation "with the longest side of said three sides of said base being shorter than the shortest side of any of said triangular recesses" and in claim 18, lines 6 through 7, the limitation reading "with the longest side being shorter than the longest of any of said straight line sides of the recesses" and in claim 19, lines 13 through 14, the limitation

reading “a longest side of said three sides of said base being shorter than the shorter side of any of said triangular recesses” and further in claim 23 that lines 8 and 9 reciting “the longest side of three sides of said base being shorter than the shortest side of any of said triangular recesses” are all allegedly new matter.

Applicant traverses this view and respectfully submits the examiner has not read the claims in light of the written specification and the drawings forming a part of the specification of the application as originally filed.

In claim 10, lines 12 and 13, the limitation “with a longest side of said three sides of said base being shorter than the longest side of any of said triangular recesses” applies to the cleat to which the claim is directed. In looking at Figures 8, 9, 10 and 11 it is abundantly clear that the longest side of the base of cleat 10 is shorter than the longest side of any of the triangular recesses 14A, 14B, 14C and 14D of any of the shoes depicted in Figures 8, 9, 10 and 11. The specification clearly points out that the cleat base 22 is triangularly shaped and has a flat bottom 24 and that due to this configuration the cleat “can fit into different size recesses 14, including recesses that have indents for receiving grips extending from the base as in conventional cleats.”³ With the cleat having a generally triangular base⁴ and with the triangular base shape facilitating fitting the base into different size recesses 14, it should be clear to any one having even a rudimentary, high school knowledge of geometry that the longest of the three sides of the triangular base must be shorter than the longest side of any of the triangular recesses, as recited in claim 10. Hence, while the precise language to which the examiner has objected admittedly does not appear verbatim in the written specification, that language

³ Specification as filed, page 4, lines 4 through 6.

⁴ Specification, page 4, line 1

recites a structural combination which unquestionably is disclosed in the original application when the text on page 4, commencing at line 1 and running through line 6, is read in view of drawing figures 5, 6, 8, 9, 10, 11 and 12 of the application as filed. Reconsideration and withdrawal of the rejection of claim 10 under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement is respectfully solicited.

An applicant complies with the written description requirement "by describing the invention with all its claimed limitations . . . by such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention." Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572 (Fed. Cir. 1997) (emphasis added). Applicant respectfully submits that the Features are supported by the original specification in such a way as to reasonably convey to one skilled in the art that the inventor was in possession of the claimed invention at the time the application was filed. Specifically, the Features of claim 10, 11, 15, 18, 19 and 25 are clearly shown in the drawings originally filed as part of the specification.

Certain amendments to a specification do not constitute new matter. For example, an amendment is not considered new matter when it simply makes a disclosure of information that one skilled in the art would have already understood to be disclosed in the application as originally filed. See generally M.P.E.P. § 2167.07. As another example, rewording and rephrasing of previously disclosed subject matter does not constitute new matter. See, e.g., In re Anderson, 471 F.2d 1237, 1244 (C.C.P.A. 1973).

"[T]o avoid the new matter prohibition, an applicant must show that its original application supports the amended matter." Schering Corp. v. Amgen, Inc., 222 F.3d

1347, 1352 (Fed. Cir. 2000). “The fundamental inquiry is whether the material added by the amendment was inherently contained in the original application.” Id. Applicant submits that the Features are disclosed by the originally filed drawings.

Applicant respectfully refers Examiner to the case of In re Reynolds, 443 F.2d 384 (C.C.P.A. 1971). In Reynolds, the patent application as originally filed contained a drawing that the Court held taught the features of later-added claims, even though the original specification did not contain text teaching the feature. See generally In re Reynolds, 443, F.2d 384 (C.C.P.A. 1971). In Reynolds, the applicant argued that the drawings disclosed the subject-matter of the later added claims; the examiner agreed in general with the applicant that the drawing can be used as disclosure in supporting claims but, contended that the particular drawings in Reynolds’ application did not disclose a certain geometry which was in question that the Reynolds’ position on the issue of presence of the disclosure in question and that Reynolds’ position on the issue of presence of the disclosure in question in the drawing was “merely conjecture.” The Court opined on this issue as follows:

First, we do not think [applicant’s] position is ‘mere conjecture’ in view of what is apparently a geometric certainty in Fig. 2. We realize that a patent drawing does not have to be to any particular scale. Nevertheless, a person attempting to construct a capacitor following appellant’s disclosure would have to distort significantly the relationships show in Fig. 2 in order not to produce a device which would inherently perform the recited function. In view of the unusual shape of plate 24 and the eccentric mounting of plate 26 on shaft 17, we think a person skilled in the art would suspect that there was some reason for the relationships shown in the drawing and would not regard such disclosure as accidental or arbitrary.

Id. at 389 (emphasis added) (cited by M.P.E.P. § 2163.07(a) for the additional proposition that a disclosure of a device in the original application can support a later amendment of a function, use or advantage of that device).

Applicant respectfully submits that the features cited by the Examiner from independent claims 10, 11, 15, 18, 19 and 25 are supported by the originally filed drawings. Generally, the features relate to the size of the longest side of the base relative to the longest side of the triangular recess. The features are disclosed at least in Figures 8-11, where it is shown that the base of the inventive cleat fits within the triangular recesses of the prior art. In order for the base of the cleat to fit within the triangular recess in the manner shown by the drawing, it is inherent geometric necessity that the longest side of the base is shorter than the longest side of the triangular recess.

Regarding dependent claims 12-14, 16, 17 and 20-24, Examiner has not expressly stated which aspect of the claim is the basis of the rejection. Applicant thus believes Examiner has rejected these claims due to the Examiner's concerns regarding the independent claims. Applicant thus respectfully traverses the rejection of dependent claims 12-14, 16, 17 and 20-24 at least for the same reasons as Applicant's traversal of independent claims 10, 11, 15, 18, 19 and 25.

Applicant respectfully requests the Examiner withdraw the rejection under 35 U.S.C. § 112 ¶ 1 and immediately allow pending claims 10-26.

II. Rejection of Claims 1-3, 8, 10-18 Under 35 U.S.C. § 112 ¶ 2

At pages 3-4 of the Office Action, Examiner states that claims 1-3, 8 and 10-18 are rejected under 35 U.S.C. § 112 ¶ 2 as failing to particularly point out and identify the subject matter. Examiner states that there is confusion as to whether Applicant is

claiming the cleat or is claiming the cleat in combination with the shoe. The Examiner further indicates that Examiner will treat the claims as if the reference to the shoe is merely a statement of intended use and requested clarification.

For the record, Applicant further clarifies that the scope of the claims as follows: Claims 1-3 and 10-18 are directed to the cleat. Claims 4-9 and 19-26 are directed to a shoe having the inventive cleat. Applicant thus respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. § 112 ¶ 2 and immediately allow claims 1-3, 8 and 10-18.

III. Objection to the Specification Under 35 U.S.C. § 132

At page 4 of the Office Action, Examiner states that the amendment of May 20, 2003, is objected to under 35 U.S.C. § 132 as adding new matter with regards to the phrase “has a generally isosceles and/or equilaterally triangular shape recess formed about the receptacle.”

Applicant traverses the objection to the amendment filed 20 May 2003 and the examiner’s assertion that such amendment added new matter to the disclosure. Applicant respectfully notes that the drawings of a patent application are a part of the disclosure. The drawings alone can be the basis for addition of descriptive material to the original written description. Indeed, the case law decisions approving of the same are legion.⁵

Applicant respectfully traverses this objection at least for the following reasons. The text of the May 20, 2003, amendment characterizes the four manufacturer’s shoes. The shoes themselves are prior art and this passage is characterizing the prior art. There

⁵ See, for example, *Cooper Cameron Corp. v. Kvaerner Oilfield Products, Inc.*, 291 F.3d 1317, 1322, 62 USPQ2d 1846 (Fed. Cir. 2002). *Scanner Technologies Corp. v. ICOS Vision Systems Corp.*, 253 F.Supp.2d 624, 633 (S.D. N.Y. 2003); *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858, 866, 26 USPQ2d 1767, 1774 (Fed. Cir. 1993)

is a presumption that all those skilled in the art would have all knowledge of the prior art upon reading the patent application and, thus no new matter has been added to the application.

Furthermore, Applicant respectfully submits that the cited phrase is supported by the original disclosure. As stated *supra*, the cited phrase was inherently contained in the original application as shown in at least Figures 8-11. In fact, the Applicant respectfully submits that Examiner had done exactly that which the Examiner objects to in the current Office Action. At pages 7-8, the Examiner rejects claims 1, 3-4, 6-7 and 9 by asserting that U.S. Patent 5,943,795 (“Ueda”) teaches “that it is desirable to have the mounting hole oblong shape” by only referring to Figure 7 and no other written language. Office Action, page 7, lines 17-19. See also Office Action, page 8, lines 3-4 (asserting the ratio of the length of the mounting hole to the width of the mounting hole “appears” to be 8:7 to about 10:7). If the Examiner asserts Ueda teaches a limitation of the Applicant’s claims by only referring to a drawing, then Examiner must agree that the drawings are part of the disclosure. Therefore, if the Examiner agrees that the drawings are part of the disclosure, then merely reciting what is already disclosed in the drawings do not constitute new matter.

Applicant further submits that what constitutes an isosceles or equilateral triangle is well-known and certainly within the purview of one of ordinary skill in the art to which this invention pertains. One of ordinary skill in the art would immediately recognize that the triangular recesses illustrated in figure 11 are essentially equilateral triangular recesses, whereas the triangular recesses illustrated in figure 8 are essentially isosceles triangular shaped recesses. Adding words to the specification, which words are the very

definitions of the shapes shown in the drawings filed with the application, does not add new matter to the specification. Applicant respectfully requests reconsideration and withdrawal of the rejection of the amendment filed 20 May 2003 as allegedly introducing new matter into the disclosure.

For at least these reasons, Applicant respectfully requests that Examiner withdraw the objection under 35 U.S.C. § 132 and allow the amendment.

IV. Rejection of Claim 1 Under 35 U.S.C. 102(b)

At pages 4-6 of the Office Action, Examiner states that claim 1 is rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 1,055,229 (“Rogers”). The Applicant respectfully traverses the rejection for at least the following reasons.

Rogers teaches a fastener for shoe sole spike plates. Rogers teaches that the cleat is attached by operation of jaws 11 by means of turnbuttons 9 and the slots 10 in said jaws. Rogers, col. 1, lines 44-47.

The claims have been amended to distinguish over the art. Claim 1 has been amended to recite that the generally triangular base of the universal cleat is “one piece molded plastic” and has “two straight sides of equal length”. The oblong-shaped mounting hole has further been recited as being “recessed within” the base of the cleat for receiving a retaining screw. These structural limitations distinguish claim 1 over U.S. patent 1,055,2289 to Rogers, on which the 35 USC 102 anticipation rejection is based, since the reference does not disclose a one piece plastic base and certainly does not disclose an oblong-shaped mounting hole recessed within the base for receiving a retaining screw. Accordingly, reconsideration and withdrawal of 35 USC 102 rejection of claim 1 based on Rogers is respectfully solicited.

These amendments are further believed to distinguish claims 2 and 3, as depending from claim 1, and to render those claims unobvious in view of U.S. patent 1,055,229 to Rogers. Rogers does not suggest any cleat fitting within a recess and therefore cannot suggest a cleat having a base "smaller than the areas of each of the recesses" as recited in claim 2.

Moreover, Rogers does not suggest any numerical ratio of the length of the mounting hole to the width of the mounting hole as recited in claim 3; indeed, Rogers does not even disclose any mounting hole, let alone one which is recessed into the base for receiving a retaining screw. The aperture appearing in Rogers is simply an area where material has been removed from the spike assembly to reduce the weight of the assembly and has nothing at all to do with mounting the assembly on a shoe.

As respecting claim 8, there is no recess indicated or disclosed by Rogers and therefore claim 8, reciting a ratio between the area of the base and the area of the recess, is not rendered obvious by Rogers, especially in light of the fact that claim 8 depends from claim 2 which in turns depends from claim 1 as amended.

The Applicant respectfully submits that Rogers does not anticipate the Applicant's independent claim 1. Specifically, Applicant's independent claim 1 recites a universal cleat comprising an oblong shaped mounting hole in the base for receiving the retaining screw. The hole is oblong shaped to accommodate the fact that the mounting holes in the various shoes are not all in the same location relative to the periphery of the base. Applicant's Specification, p. 4, lines 13-20.

Rogers fails to teach, show or suggest a universal cleat comprising an oblong shaped mounting hole in the base for receiving the retaining screw. In contrast, Rogers

teaches adjustable slots on the jaws 11 and not the base ball spike plate 1 (i.e. the cleat). Rogers, col. 1, lines 44-47; Figs. 1-2 (emphasis added). Therefore, Johnson clearly does not anticipate Applicant's independent claim 1 and the Applicant's respectfully request the rejection be withdrawn.

V. Rejection of Claims 1-9 Under 35 U.S.C. 103(a)

A. Claims 2, 3 and 8

At pages 6-7 of the Office Action, Examiner states that claims 2, 3 and 8 are rejected under 35 U.S.C. § 103(a) as being obvious over Rogers. The Applicant respectfully traverses the rejection for at least the following reasons.

The teachings of Rogers are discussed above. Rogers fails to teach, show or suggest a universal cleat comprising an oblong shaped mounting hole in the base for receiving the retaining screw, as positively claimed by Applicant's independent claim 1. In contrast, Rogers teaches adjustable slots on the jaws 11 and not the base ball spike plate 1 (i.e. the cleat). Rogers, col. 1, lines 44-47; Figs. 1-2 (emphasis added).

Therefore, independent claim 1 is clearly patentable over Rogers.

Moreover dependent claims 2, 3 and 8 depend, either directly or indirectly, from independent claim 1 and recite additional limitations. Therefore, for at least the same reasons discussed above, dependent claims 2, 3 and 8 are also patentable over Rogers. As such, the Applicant respectfully requests the rejection be withdrawn.

B. Claims 1, 3-4, 6-7 and 9

At page 8 of the Office Action, Examiner states that claims 1, 3, 4, 6, 7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patents 5,058,292

(“Tanel”), 4,590,693 (“Kawashima”) and 5,943,795 (“Ueda”). The Applicant respectfully traverses the rejection for at least the following reasons.

Tanel teaches a cleat for an athletic shoe. Tanel teaches that the cleat is bonded to the shoe. Tanel, col. 8, lines 66-68. Kawashima teaches a baseball or softball shoe sole. Kawashima teaches a generally square shaped cleat. Kawashima, Fig. 1. The cleats are attached using an internally threaded fitting. Kawashima, col. 2, lines 15-17. Ueda teaches a bicycle shoe. Ueda teaches that the sole of the bicycle shoe is provided with one or more attachment apertures so that the shoe can be used with either a road bicycle or a mountain bicycle. Ueda, Abstract.

The Applicant respectfully submits that Tanel, Kawashima and Ueda, alone or in any permissible combination, do not teach, show or suggest the Applicant’s amended independent claims 1 and 4. Specifically, Applicant’s independent claims 1 and 4 recite a cleat comprising a generally triangular base with a substantially flat bottom, the dimensions of the substantially flat bottom being sized to fit within differently shaped recess perimeters. The dimensions of the cleat, in combination with the oblong shaped mounting hole allow the cleat to be compatible with differently shaped recess perimeters. Applicant’s Specification, Summary.

Tanel completely fails to teach, show or suggest a cleat comprising a generally triangular base with a substantially flat bottom, the dimensions of the substantially flat bottom being sized to fit within differently shaped recess perimeters. Tanel clearly teaches away from the Applicants invention because Tanel teaches that each cleat is bonded to the sole. Tanel, col. 8, lines 66-67 (emphasis added). Therefore, the cleat taught in Tanel can only be used with a shoe manufactured for the specific cleat disclosed

in Tanel. Kawashima and Udea fail to bridge the significant divide left by Tanel. Kawashima only teaches a generally square shaped cleat attached with an internally threaded fitting. Kawashima, col. 2, lines 15-17; Fig. 1 (emphasis added). Ueda only teaches a shoe that is compatible with a variety of cleats. Ueda, Abstract (emphasis added). In fact, Ueda teaches away from the Applicant's invention because Ueda teaches a shoe that is compatible with a variety of cleats and not a cleat compatible with a variety of shoes as claimed by the Applicant's independent claims 1 and 4. Id.

Assuming arguendo that it were proper to combine Tanel, Kawashima and Ueda, which Applicant does not admit, the combination of Tanel, Kawashima and Ueda fail to teach, show or suggest the Applicant's invention. Combining Tanel, Kawashima and Ueda only teaches a shoe manufactured to be compatible with either a triangular or square cleat fitted by a threaded screw. The combination of Tanel, Kawashima and Ueda do not teach a cleat comprising a generally triangular base with a substantially flat bottom, the dimensions of the substantially flat bottom being sized to fit within differently shaped recess perimeters, as positively claimed by the Applicant's independent claims 1 and 4.

Moreover, Applicant respectfully submits that Examiner is using impermissible hindsight because there is no motivation to combine the teachings of Tanel, Kawashima and Ueda. Tanel and Kawashima clearly teach inventions related to baseball cleats. In contrast, Ueda clearly teaches an invention related to a biking shoe. The Applicant submits one of ordinary skill in the art of baseball cleats would not look to a biking shoe because of their inherently different design, properties and function. There is no suggestion or motivation to combine Tanel, Kawashima and Ueda. Therefore,

Applicant's independent claims 1 and 4 are clearly patentable over Tanel, Kawashima and Ueda.

Moreover, dependent claims 3, 6, 7 and 9 depend, either directly or indirectly, from independent claims 1 and 4, respectively, and recite additional limitations. Therefore, for at least the same reasons discussed above, dependent claims 3, 6, 7 and 9 are also patentable over Tanel, Kawashima and Ueda. As such, the Applicant respectfully requests the rejection be withdrawn.

C. Claims 2, 5, 8 and 9

At page 8 of the Office Action, Examiner states that claims 2, 5, 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanel, Kawashima and Ueda and further in view of U.S. Patents 4,523,396 ("Dassler"). The Applicant respectfully traverses the rejection for at least the following reasons.

The teachings of Tanel, Kawashima and Ueda are discussed above. Dassler teaches an athletic shoe having spike or stud-shaped cleats exchangeably arranged at the running sole. Base parts of the spike or stud shaped cleats are inserted into an opening by means of a sliding or pressing fit. Dassler, col. 4, lines 16-22. The cleat is further secured with a shaft inserted through a continuous bore hole so that all of the cleats of a row are fastened jointly. Id. at lines 49-61.

The Applicant respectfully submits that Tanel, Kawashima, Ueda and Dassler, alone or in any permissible combination, do not teach, show or suggest the Applicant's amended independent claims 1 and 4. Specifically, Applicant's independent claims 1 and 4 recite a cleat comprising a generally triangular base with a substantially flat bottom, the dimensions of the substantially flat bottom being sized to fit within differently shaped

recess perimeters. The dimensions of the cleat, in combination with the oblong shaped mounting hole allow the cleat to be compatible with each differently shaped recess perimeter. Applicant's Specification, Summary.

Tanel completely fails to teach, show or suggest a cleat comprising a generally triangular base with a substantially flat bottom, the dimensions of the substantially flat bottom being sized to fit within differently shaped recess perimeters. Tanel clearly teaches away from the Applicants invention because Tanel teaches that each cleat is bonded to the sole. Tanel, col. 8, lines 66-67 (emphasis added). Therefore, the cleat taught in Tanel can only be used with a shoe manufactured for the specific cleat disclosed in Tanel. Kawashima, Udea and Dassel fail to bridge the significant left by Tanel. Kawashima only teaches a generally square shaped cleat attached with an internally threaded fitting. Kawashima, col. 2, lines 15-17; Fig. 1 (emphasis added). Ueda only teaches a shoe that is compatible with a variety of cleats. Ueda, Abstract (emphasis added). In fact, Ueda teaches away from the Applicant's invention because Ueda teaches a shoe that is compatible with a variety of cleats and not a cleat compatible with a variety of shoes as claimed by the Applicant's independent claims 1 and 4. Id. Dassel only teaches spike or stud shaped cleats that can be inserted into openings by means of a sliding or pressing fit that are further secured by a shaft inserted through a continuous borehole. Dassler, col. 4, lines 16-22, 49-61.

Assuming arguendo that it were proper to combine Tanel, Kawashima, Ueda and Dassel, which Applicant does not admit, the combination of Tanel, Kawashima, Ueda and Dassel fail to teach, show or suggest the Applicant's invention. Combining Tanel, Kawashima, Ueda and Dassel only teaches a shoe manufactured to be compatible with

either a triangular or square cleat fitted by a threaded screw or by means of a sliding or pressing fit, wherein the cleat is further secured with a shaft inserted through borehole. The combination of Tanel, Kawashima, Ueda and Dassel do not teach a cleat comprising a generally triangular base with a substantially flat bottom, the dimensions of the substantially flat bottom being sized to fit within differently shaped recess perimeters, as positively claimed by the Applicant's independent claims 1 and 4.

Moreover, Applicant respectfully submits that Examiner is using impermissible hindsight because there is no motivation to combine the teachings of Tanel, Kawashima and Ueda. Tanel and Kawashima clearly teach inventions related to baseball cleats. In contrast, Ueda clearly teaches an invention related to a biking shoe. Dassel clearly teaches an invention related to a running shoe. Furthermore, Dassel teaches away from Tanel and Kawashima because Dassel teaches arranging the cleats in a horizontal fashion and Tanel and Kawashima teach arranging the cleats in a circular fashion. The Applicant submits one of ordinary skill in the art of baseball cleats would not look to a biking shoe or running shoe because of their inherently different design, properties and function. There is no suggestion or motivation to combine Tanel, Kawashima, Ueda and Dassel. Therefore, Applicant's independent claims 1 and 4 are clearly patentable over Tanel, Kawashima, Ueda and Dassel.

Moreover, dependent claims 2, 5, 8 and 9 depend, either directly or indirectly, from independent claims 1 and 4, respectively, and recite additional limitations. Therefore, for at least the same reasons discussed above, dependent claims 2, 5, 8 and 9 are also patentable over Tanel, Kawashima, Ueda and Dassel. As such, the Applicant respectfully requests the rejection be withdrawn.

CONCLUSION

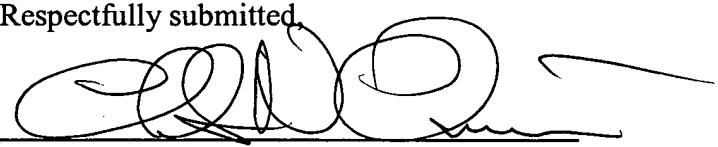
Applicant believes that Applicant has fully responded to the Examiner's concerns and that all of the pending claims are in condition for immediate issuance. Applicant respectfully requests immediate issuance of all pending claims.

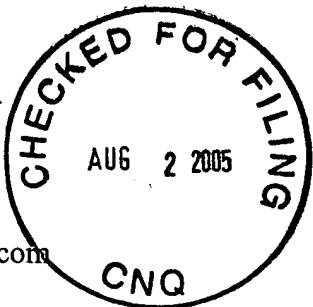
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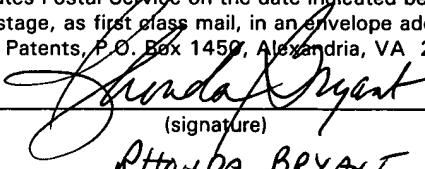
Applicant requests that any questions concerning this matter be directed to the undersigned at (215) 299-2135.

Respectfully submitted,

Date: 2 August 2005


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